



Federal Communications Commission
Consumer & Governmental Affairs Bureau
Washington, D.C. 20554

CGB

SEP 5 2003

Control No 0302389-Pol

The Honorable Bob Goodlatte
U S House of Representatives
10 Franklin Road, S E , Suite 540
Roanoke, VA 24011-2121

RECEIVED

SEP 11 2003

Dear Congressman Goodlatte

Thank you for your letter of August 13, 2003, regarding the Federal Communications Commission's (Commission) recent amendment to the rules implementing the Telephone Consumer Protection Act of 1991 (TCPA). Your letter forwards several letters from constituents and inquires about the ruling on unsolicited facsimiles

On September 18, 2002, the Commission released a Notice of Proposed Rulemaking (NPRM) in CG Docket No 02-278, seeking comment on whether it should change its rules that restrict telemarketing calls and unsolicited fax advertisements, and if so, how. The NPRM sought comment on the option to establish a national do-not-call list, and how such action might be taken in conjunction with the national do-not-call registry rules adopted by the Federal Trade Commission (FTC) and the numerous state do-not-call lists. In addition, the Commission sought comment on the effectiveness of the TCPA's unsolicited facsimile advertisement rules, including the Commission's determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive advertisements via fax. The Commission received over 6,000 comments from individuals, businesses, and state governments on the TCPA rules

The record in this proceeding, along with our own enforcement experience, demonstrated that changes in the current rules are warranted, if consumers and businesses are to continue to receive the privacy protections contemplated by the TCPA. As explained in the Commission's Report and Order released on July 3, 2003, the record indicated that many consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Consumers emphasized that the burden of receiving hundreds of unsolicited faxes was not just limited to the cost of paper and toner, but includes the time spent reading and disposing of faxes, the time the machine is printing an advertisement and is not operational for other purposes, and the intrusiveness of faxes transmitted at inconvenient times, including in the middle of the night

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As we explained in the Report and Order, the legislative history of the TCPA indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Therefore, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. The amended rules require all entities that wish to transmit advertisements to a facsimile machine to obtain permission from the recipient in writing.

The Commission's amended facsimile advertising rules were initially scheduled to go into effect on August 25, 2003. However, based on additional comments received since the adoption of the July Report and Order, the Commission, on its own motion, determined to delay the effective date of some of the amended facsimile rules, including the elimination of the established business relationship exemption, until January 1, 2005. The comments filed after the release of the Report and Order indicate that many organizations may need additional time to secure this written permission from individuals and businesses to which they fax advertisements. Enclosed is a copy of the Commission's Order on Reconsideration, released on August 18, 2003.

We appreciate your comments. We have placed a copy of your correspondence in the public record for this proceeding. Please do not hesitate to contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Dane Snowden".

K. Dane Snowden

Chief

Consumer & Governmental Affairs Bureau

Enclosures

PRINT TIME AUG. 13. 4:09PM

RECEIVED TIME AUG. 13. 4:06PM

10 Franklin Road, S.E.
Suite 540
Roanoke, Virginia 24011
PHONE: 540-857-2672
FAX: 540-857-2675
E-MAIL: Pete.Larkin@mail.house.gov

Congressman Bob Goodlatte
Sixth District of Virginia

Fax

*CCB
TC PA
2387*

To: Ms. Diane Atkinson, Congressional
Liaison Specialist, Federal
Communications Commission

From: Pete Larkin, District Director
Congressman Bob Goodlatte

Fax: 202-418-2806

Pages: 6

Phone: 202-418-1911

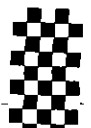
Date: 08/13/2003

Re: Constituent inquiry re ruling on unsolicited CC:
facsimiles

☒ **Urgent** ☒ **For Review** ☐ **Please Comment** ☒ **Please Reply** ☐ **Please Recycle**

The information contained in this fax is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the person responsible for delivering this fax to the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this fax in error, please notify Congressman Goodlatte's Roanoke office at 540-857-2672

AUG 2003 RCUD



COMMITTEE ON AGRICULTURE
CHAIRMAN

COMMITTEE ON THE JUDICIARY
VICE-CHAIRMAN, SUBCOMMITTEE ON
COURTS, THE INTERNET, AND
INTELLECTUAL PROPERTY
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY

SELECT COMMITTEE ON
HOMELAND SECURITY

SUBCOMMITTEE ON
INFRASTRUCTURE AND
BORDER SECURITY
SUBCOMMITTEE ON
CYBERSECURITY, SCIENCE, AND
RESEARCH & DEVELOPMENT

VIA FAX
(202)418-2806

Congress of the United States House of Representatives

August 13, 2003



PRINT TIME AUG. 13 4 06PM

Dear Ms. Atkinson:

Attached please find correspondence that I have received from representatives of the Roanoke, Virginia Regional Chamber of Commerce and the Virginia Automobile Dealers Association regarding their concerns about a ruling on unsolicited facsimiles. I would appreciate you looking into this matter and providing me with a response for my constituents. I am especially interested in learning if their interpretation of the new rule is correct as it applies to facsimiles sent to their respective members. Please mail your response to my Roanoke office at the address marked below.

Thank you for your assistance.

With kind regards,

Very truly yours,

Bob Goodlatte
Member of Congress

RWG:pl

Attachments

BOB GOODLATTE
8TH DISTRICT, VIRGINIA
2240 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-4808
(202) 225-5431
FAX (202) 225-9891
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DEPUTY MAJORITY WHIP
REPUBLICAN POLICY COMMITTEE
CHAIRMAN, HOUSE REPUBLICAN
HIGH TECHNOLOGY WORKING GROUP
CO-CHAIR,
CONGRESSIONAL INTERNET CAUCUS

Ms. Diane J. Atkinson
Congressional Liaison Specialist
Federal Communications Commission
445 12th Street, N.W., Room 8-C453
Washington, D.C. 20554

Dear Ms. Atkinson:

Attached please find correspondence that I have received from representatives of the Roanoke, Virginia Regional Chamber of Commerce and the Virginia Automobile Dealers Association regarding their concerns about a ruling on unsolicited facsimiles.

I would appreciate you looking into this matter and providing me with a response for my constituents. I am especially interested in learning if their interpretation of the new rule is correct as it applies to facsimiles sent to their respective members. Please mail your response to my Roanoke office at the address marked below.

Thank you for your assistance.

With kind regards,

Very truly yours,

Bob Goodlatte
Member of Congress

RWG:pl

Attachments

2 SOUTH MAIN STREET
SUITE A FIRST FLOOR
HARRISONBURG, VA 22801-3707
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(540) 432-2391

916 MAIN STREET
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LYNCHBURG, VA 24504-1608
FAX (434) 845-8306
(434) 845-8306

10 FRANKLIN ROAD, S.E.
SUITE 540
ROANOKE, VA 24011-2121
FAX (540) 857-2672
(540) 857-2672

7 COURT SQUARE
STATION, VA 24401-3307
FAX (540) 885-3930
(540) 885-3930

PRINTED ON RECYCLED PAPER

Larkin, Pete

From: Goodlatte, Bob
Sent: Wednesday, August 13, 2003 3:10 AM
To: Larkin, Pete
Subject: Re: FW: USCC Alert - FCC Blast Fax Rule

Importance: High

PL Handle as casework and write to the FCC and ask for a response to the US chambers letter and specifically ask if the Chambers interpretation of the proposed new rule as it applies to faxes to its membership is correct. RWG

 Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

-----Original Message-----

From: Larkin, Pete <Pete.Larkin@mail.house.gov>
To: Goodlatte, Bob <Bob.Goodlatte@mail.house.gov>
 CC: Husband, Shelley <Shelley.Husband@mail.house.gov>; Foster, Amanda <Amanda.Foster@mail.house.gov>; Ritchie, Branden <Branden.Ritchie@mail.house.gov>
Sent: Tue Aug 12 10 04 18 2003
Subject: FW: USCC Alert - FCC Blast Fax Rule

Bob

I suppose it was only a matter of time before we heard from a constituent on the opposite side of the unsolicited faxes issue. Let me know if you think an inquiry to the FCC is appropriate at this point

-----Original Message-----

From: Joyce Waugh [mailto:jwaugh@roanokechamber.org]
Sent: Monday, August 11, 2003 1:23 PM
To: Larkin, Pete
Subject: FW: USCC Alert - FCC Blast Fax Rule
Importance: High

Pete,

We need Congressman Goodlatte's help.

We've signed on to request a stay on this new FCC ruling. It could prevent us from effectively communicating with our members until we have new, signed agreements from them allowing us to send them event information with anything considered "solicitation" (some of our events cost)

The ruling is unclear as to the complete meaning, but as a non-profit, we cannot chance the kinds of fines that could be imposed.

We've sent letters through the link below. Please let us know if Congressman Goodlatte can help us with this matter. It will cost us a tremendous amount in time, resources, and hard dollars to have to get everyone of our 1400+ members signed on to allowing us to provide them the kinds of services we provide to them.

Thanks

Joyce

Joyce Waugh, CECD
 Vice President, Public Policy
 Roanoke Regional Chamber of Commerce
 212 S. Jefferson Street
 Roanoke, VA 24011-1702

PRINT TIME AUG 13, 4:08PM

RECEIVED TIME AUG 13, 4:06PM

540-983-0700 x 226
fax 540-983-0723

-----Original Message-----

From: Hallmark, Moore [mailto:MHallmark@USChamber.com]
Sent: Thursday, August 07, 2003 3:53 PM
Subject: USCC Alert - FCC Blast Fax Rule
Importance: High

Dear Friends in the Southeast Region,

If you send faxes to your members to promote chamber events, READ THIS MESSAGE CAREFULLY. Beginning as soon as mid-September, a new Federal Communications Commission (FCC) rule could

Prohibit commercial faxes without prior written consent. A commercial fax is anything where money might change hands - your luncheons, business after hours, golf outings, membership renewals - anything. A business or association - or chamber of commerce - would have to get written consent from the recipient before sending a fax.

The old exception for an "existing business relationship" will not protect you. You will need prior written approval from anyone you send faxes to - even longstanding members.

The penalties for violations will range from \$500 to \$11,000 per fax. This rule is a follow up to the recent Do-Not-Call Registry, which the FCC and Federal Trade Commission recently established in reaction to public sentiment against telemarketing solicitations. Only they went even further on faxes. The U.S. Chamber feels that they went way too far and that this rule will unreasonably inhibit legitimate and constructive commerce. We will do all we can in Washington to head off this damaging rule. WE NEED YOUR HELP! Send a letter to FCC Chairman Michael Powell, urging him to temporarily stay and then reconsider this rule. You can send a pre-written letter by visiting <http://www.gainonline.net/nofaxrule>. Simply make sure that your address is included, add any personal comments you have, and send.

For more information about the rule and a model prior consent form, visit <

http://www.uschamber.com/government/issues/technology/fcc_fax>.

The FCC wrote this rule without adequate comment from the business community. The hour is late, but there is still time to be heard. Comments from organizations that will be directly affected - and chambers of commerce, YOUR CHAMBER, will be directly affected - can make a real difference. Please write to Chairman Powell today.

As always, our regional office stands ready to help. Just respond to this message or call at 770-951-8864 anytime.

Thanks,

Moore

Moore Hallmark, Regional Director
Carolyn Gathercole, Staff Assistant

**VIRGINIA
AUTOMOBILE
DEALERS
ASSOCIATION**

August 11, 2003

AUG 13 2003

The Honorable Bob Goodlatte
10 Franklin Road, SE Suite 540
Roanoke, VA 24011

Dear Bob,

As a follow-up to my letter of August 4, 2003 concerning the new fax regulations announced by the FCC, I just wanted to emphasize once again the importance of this issue to the Virginia Automobile Dealers Association and our Virginia dealer members. This new rule would significantly impair the ability of this association to communicate with our members and our dealers to communicate with their customers. I have enclosed a copy of our August 4th letter for your reference.

Time is of the essence here as the final rule is set to become effective on August 25, 2003. On behalf of the VADA and our dealer members, I ask that you take immediate action to allow Virginia businesses like the VADA and our dealer members to continue to communicate with their customers.

Again, I would appreciate your response as soon as possible.

Thank you for your consideration of this critical problem for the automobile dealers of Virginia and the Virginia Automobile Dealers Association.

Sincerely,



Donald L. Hall
President

cc Bruce Farrell, *Berglund Chevrolet*

VIRGINIA
AUTOMOBILE
DEALERS
ASSOCIATION

August 4, 2003

The Honorable Bob Goodlatte
10 Franklin Road, SE Suite 540
Roanoke, VA 24011

Dear Bob

Please pardon me for sending such a lengthy letter, but I am shocked by the new fax regulations recently announced by the FCC that are simply unparalleled as an example of a regulatory process run amok resulting in too much government intrusion into the legitimate activities of business. I am unable to understand a regulation that basically prevents businesses including the VADA and the Virginia auto dealers we represent from communicating with their own members and customers

I have outlined our understanding of the new rule as well as our grave concerns as to its impact on Virginia businesses including the VADA and its auto dealer members

On July 25, 2003, the Federal Communications Commission (FCC) revised the current rules to the Telephone Consumer Protection Act (TCPA). 68 Fed Reg 44,144 (Jul 25, 2003) (to be codified at 47 C.F.R. § 64.1200). The final rule is effective August 25, 2003.

The final rule now requires that any person or entity who wishes to send a fax advertisement must obtain prior, written permission from the recipient. This applies to all businesses, including associations like the VADA and the automobile dealers in Virginia we represent. This requirement applies to any fax sent containing "any material advertising the commercial availability or quality of any property, goods, or services" 47 C.F.R. § 64.1200(f)(10).

Permission must be in writing. Along with the recipient's signature, a form granting permission to receive fax advertisements must also include the recipient's fax number and a clear statement that the recipient consents to receive fax advertisements from the sender. Also, opt-out provisions are not allowed. This means that fax advertisements may not be sent with an instruction that the recipient call a phone number if he or she does not want to receive future faxes.

The final rule significantly impacts all businesses, including associations like the VADA and the automobile dealers in Virginia we represent. Under the former rule, a business could send fax advertisements without obtaining prior written consent from a recipient so long as that business had an "established business relationship" with the recipient. An "established business relationship" meant a relationship formed by a voluntary two-way communication based upon an inquiry, application, purchase or transaction. For associations, that meant that all members had an established business relationship, and the association could communicate by fax without specific consent.

PO BOX 5407
CHRONY VA 23100-0507
PHONE 804 558 5578
FAX 804 558 0070

006/007

CONG BOB GOODLATTE

08/13/03 15 26 FAX 540 857 2675

PRINT TIME AUG 13 4 08PM

RECEIVED TIME AUG 13 4 06PM

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PRINT TIME AUG. 13. 4:08PM
The Honorable Bob Goodlatte
August 4, 2003
Page 2

The final rule directly impacts the way businesses, including automobile dealerships, conduct their businesses. For example, a dealership will now be forced to obtain written permission from every prospective buyer prior to faxing a quote for purchasing a car, whether the quote was requested on-line, by phone, or at the dealership. Additionally, service departments will be required to obtain permission prior to faxing estimates for repairs even if the customer drops his or her car off for that purpose.

The final rule directly impacts associations, including the VADA, seeking to send fax advertisements to anyone, including their members, regarding meetings, services and products offered by the associations. Without express, written permission, an association like the VADA cannot fax dues statements, meeting notices, notices of the availability of services, etc. An FCC attorney, in an association training session on the new rule, even took the position that an association faxing a request for a PAC contribution without express written consent would be a violation.

This rule would be bad enough if it were simply enforced by the FCC. The rule establishes the standard that, if violated, can lead to private civil actions. Businesses across the country have been subjected to lawsuits seeking millions of dollars for violations of the TCPA. This rule will magnify the compliance problems.

It is our hope that you and your colleagues in Congress can return a measure of sanity to these regulations by recognizing that communicating by fax with existing customers of Virginia dealers and others businesses and members of Virginia associations like the VADA should not require additional consent other than the agreement of the customer or member to patronize the business or maintain membership in the association. I ask that Congress take the necessary steps to ensure this new regulation does not prevent businesses including automobile dealers and associations from communicating with their customers.

I would appreciate your response as soon as possible.

Thank you for your consideration of this critical problem for the automobile dealers of Virginia and the Virginia Automobile Dealers Association.

Sincerely,



Donald L. Hall
President

cc. Bruce Farrell, *Berglund Chevrolet*